

1 MR. BERTELLE: Yes. But they -- the very fact
2 that they were taken demonstrates -- for example, 4E
3 was clearly taken on top of the roof and it shows
4 that they were on top of my roof and they had
5 complete access to all of the wire in between the
6 NETPOP and the point where it entered my house.

7 JUDGE ZABAN: I have no -- I mean, that's fine.

8 MR. BERTELLE: That's my contention. Now, these
9 pictures show much the same as my pictures, and I
10 won't go over and belabor the thing because I'll
11 just get everyone confused. We have pictures on
12 September 8.

13 JUDGE ZABAN: Before we begin, Mr. Kerber, have
14 you had an opportunity to examine Mr. Bertelle's
15 pictures? Were these the pictures taken by
16 Ameritech?

17 MR. KERBER: I believe they were. I didn't take
18 them personally.

19 JUDGE ZABAN: Obviously --

20 MR. KERBER: I don't have any objection to them
21 at this time.

22 JUDGE ZABAN: Because obviously they depict

1 exactly the same thing as Mr. Bertelle's pictures
2 so, I mean, it's...

3 (Whereupon, Group
4 Exhibit No. 5A-B was
5 marked for identification
6 as of this date.)

7 MR. BERTELLE: 5A and B, two more pictures taken
8 on September 8th by Ameritech given to me in
9 discovery.

10 JUDGE ZABAN: Okay.

11 (Whereupon, Group
12 Exhibit No. 6A-C was
13 marked for identification
14 as of this date.)

15 MR. BERTELLE: All right. Now, I'm going to show
16 you photographs marked as Group Exhibit 6A, B and C.
17 Mr. Kerber.

18 JUDGE ZABAN: Okay.

19 MR. BERTELLE: Okay. Now, these pictures were
20 taken of the building to the east of my building,
21 same side of the street. There are two lots.
22 There's a car lot, a used car lot with -- consisting

1 of I think it's 50 feet wide in between my building
2 and this building depicted. This is 6A. This is
3 the back of the lot, and this is the back porch of
4 the building and this is the building.

5 JUDGE ZABAN: And that's correctly across this
6 lot from your building; is that correct?

7 MR. BERTELLE: That's correct, yes.

8 Now, as you can see from these three
9 pictures, the NETPOP on this building is -- I
10 believe is in here someplace. It's on the building
11 and A and -- that's 6C. And 6A and B show a
12 telephone line going from the -- from, I don't know,
13 someplace from the rear telephone line in the alley
14 all the way probably to 60, 70 feet, certainly
15 farther than 25 feet.

16 JUDGE ZABAN: Okay.

17 MR. BERTELLE: Now, here's the point: The
18 telephone wire that Ameritech uses to go from its
19 principal line in the alley to the NETPOP is a thick
20 black covered wire. We don't have any -- an example
21 of it here. Ameritech could produce one if directed
22 to do so. That wire you could see from right here

1 is, even in this picture which is 3A, this is the
2 black wire. My contention is that this wire should
3 have gone all the way to the point where it entered
4 my building, not just to the rear of the building
5 where the NETPOP is. That the NETPOP and based upon
6 the tariff that I referred to earlier as Exhibit 1,
7 that the NETPOP should have -- could have easily as
8 you can see from 6A, B and C could easily have been
9 placed at the point of entry demonstrated in 3F or
10 close thereto. And that line that ran along the
11 roof could have been the black wire that is running
12 as a lag in 6A and B.

13 Now, my point is this: That at all
14 times, the phone in my house worked. I can bring it
15 in we can test it on lines here if it can be
16 connected and ask for a continuance for that
17 purpose. I can bring it in. It has worked. I
18 personally tested it at other people's houses, it
19 worked. If the phone -- my phone did not work when
20 connected to my jack, that's the little box I was
21 referring to, my contention is it was because the
22 line on the outside of my house had a defect of some

1 kind in it which Ameritech repeatedly failed and
2 refused to repair on the pretext, among others, they
3 did not have access to the line. I feel, on top of
4 that, that the installation was incorrect, that they
5 should have run their main line -- the line that
6 would be -- where is the tariff?

7 JUDGE ZABAN: I've got the tariff.

8 MR. BERTELLE: I want to see if they have a term,
9 an -- okay. You see, I feel that the company's
10 network facility should have terminated at or about
11 the point where the line presently enters the
12 building.

13 JUDGE ZABAN: So what you're basically saying is
14 the NETPOP for you should have been further down --

15 MR. BERTELLE: Yes.

16 JUDGE ZABAN: -- at on the side of your building
17 before it entered, correct?

18 MR. BERTELLE: That's correct.

19 JUDGE ZABAN: So, in other words, their
20 connection should have run -- they should have run a
21 thicker, better wire from their pole to your NETPOP
22 which should have been connected at the side of your

1 building instead of at the back of the garage; is
2 that correct?

3 MR. BERTELLE: Correct.

4 JUDGE ZABAN: Okay.

5 MR. BERTELLE: As was done and as demonstrated in
6 Exhibit -- Group Exhibit 6. And I think that -- you
7 know, whatever the problem was, it was their problem
8 and I can tell you this: They claim that that wire
9 that you see in all these pictures on the roof is an
10 inside wire and that therefore they were not
11 responsible for repairing it. And I think I may
12 even have a ticket here and I know that they
13 certainly left a message to that effect. See, it
14 says here like for example on -- and we can mark
15 that whatever 7, I guess it would be?

16 JUDGE ZABAN: Right.

17 MR. BERTELLE: That's -- what date is that at the
18 top?

19 JUDGE ZABAN: Line is good --

20 MR. BERTELLE: 6 --

21 JUDGE ZABAN: Back wall of NID. Service -- wait.
22 The line is good to back wall at NID. Service

1 charge to extend to apartments.

2 MR. BERTELLE: See, their point was that -- this
3 is an interesting thing. I had the monthly -- this
4 is the 19th which they claim that they fixed it
5 which it wasn't fixed, obviously, but they said they
6 fixed it.

7 JUDGE ZABAN: Back to what you had indicated,
8 Mr. Kerber, that whereas Mr. Bertelle is calling
9 this connection on the garage as the NETPOP, you're
10 calling it the NID; isn't that correct.

11 MR. KERBER: Yeah. They're typically at the same
12 location. A NID is a physical device, a plastic box
13 and the NETPOP is a legal concept.

14 JUDGE ZABAN: Now, just so I understand, is from
15 the NID to the jack --

16 MR. KERBER: Yes.

17 JUDGE ZABAN: -- is it the contention of
18 Ameritech that that would be inside wiring --

19 MR. KERBER: Yes.

20 JUDGE ZABAN: -- and that would require a
21 different service; is that correct?

22 MR. KERBER: Yes.

1 JUDGE ZABAN: Okay. So when -- in other words,
2 when you talk about inside wiring or inside wiring
3 charge or responsible for inside job, from -- once
4 you connect to the NID, everything is considered
5 inside wiring; is that correct?
6 MR. KERBER: Right.
7 JUDGE ZABAN: Okay. I understand.
8 MR. BERTELLE: That's the case.
9 JUDGE ZABAN: Okay. Do you have any
10 cross-examination of Mr. --
11 MR. BERTELLE: Can I just mark these two things?
12 JUDGE ZABAN: Actually, this one I think is
13 significant. Let's mark this one as Petitioner's
14 No. 7.
15 (Whereupon, Petitioner's
16 Exhibit No. 7 was
17 marked for identification
18 as of this date.)
19 JUDGE ZABAN: Let me ask you a couple questions.
20
21
22

1 EXAMINATION

2 BY

3 JUDGE ZABAN:

4 Q. Mr. Bertelle, is it your representation that
5 this was left on your door by a member -- Ameritech
6 on June the 10th, 2000, is that correct,
7 approximately 7:45 in the morning?

8 A. I believe that it was, but, let's be honest
9 about this, I wasn't there when he did it.

10 Q. But you had called for service at that time;
11 is that correct?

12 A. Yes, I did. And he left a message to that
13 effect on my --

14 JUDGE ZABAN: Mr. Kerber, do you have any doubt
15 as to the authenticity of --

16 MR. KERBER: No, it appears to be one of our hang
17 cards.

18 JUDGE ZABAN: We're going to admit that into
19 evidence as Exhibit No. 7.

20 Mr. Kerber, do you have any questions
21 of Mr. Bertelle?

22 MR. KERBER: Just take a minute to look at my

1 notes.

2 No, I don't.

3 JUDGE ZABAN: I have a couple questions of
4 Mr. Bertelle.

5 EXAMINATION

6 BY

7 JUDGE ZABAN:

8 Q. Were you ever told what the nature of the
9 problem was?

10 A. No, to this day I have no idea.

11 Q. Were you ever told why it was necessary for
12 Ameritech to have access to your house?

13 A. No.

14 Q. On the occasion that it was repaired and
15 this goes back -- let's talk about first the initial
16 repair. I believe it was done in December of '98.
17 Were you aware of what the nature of the problem was
18 that was discovered on that occasion?

19 A. No.

20 Q. Do you have any idea if the subsequent
21 problems were the same problems as what was found in
22 December?

1 A. I have no idea.

2 Q. And then in approximately -- okay. After
3 the first occurred in January of -- or strike that.

4 First problem was found December of
5 '98; approximately a month later in January the
6 problem reoccurred? It was the same problem; is
7 that correct.

8 A. Same problem. See, what happened is that
9 originally this was an intermittent problem. It
10 would -- everything would be fine and then all of a
11 sudden it wouldn't work and then there were other
12 times when I didn't even know I was having a problem
13 and I would get complaints from friends.

14 Q. Did this occur during periods of time when
15 there was precipitation?

16 A. Yes and no.

17 Q. When the problem was discovered in
18 January -- strike that.

19 You told me in January '99 the problem
20 reoccurred and you received a no access ticket. The
21 next time you talked about was back in June of 2000.
22 Did you have phone service between January of '99

1 and June of 2000?

2 A. Yes.

3 Q. Okay. How did that problem correct itself?

4 A. Well, somebody came out in January of '99 or
5 2000, whenever it was actually repaired, came to my
6 house and I think it was on a Sunday it may have
7 been even. A black fellow, very nice, excellent
8 representative for Ameritech. He was very nice and
9 gracious and he spent about two hours and said --
10 you know, actually, to be honest with you, initially
11 he said he had it fixed and then it didn't -- still
12 wasn't working, but eventually he said I fixed it
13 and it was actually fixed.

14 Q. Did he tell you what was wrong with it at
15 that time?

16 A. No, he didn't.

17 Q. Did you ever receive in discovery any
18 information from Ameritech as to what repairs were
19 done on your property in the occasion repairs were
20 done as part of your discovery?

21 A. I may have, but I don't -- they were in
22 techno talk that I wouldn't have recognized. But I

1 can tell you this, the problem had nothing to do
2 with my own equipment inside the house.

3 Q. I understand that. It's not an issue with
4 the phone. What I'm looking at is could you bring
5 that in or Mr. Kerber will present it, I'm sure, in
6 his case.

7 Now, so the next time the problem
8 occurs is in June of 2000, correct?

9 A. Right.

10 Q. Has that -- you still have no phone service?

11 A. What happened is that the phone didn't work,
12 and then we went through this whole summer thing and
13 all that stuff and then in September I took the line
14 out so it can't possibly work now because there's
15 no -- this line is not in.

16 Q. So you have no phone service in your house?

17 A. No, I have no phone service.

18 JUDGE ZABAN: Anything further?

19 MR. BERTELLE: No, I just ask that all my
20 exhibits be admitted.

21 JUDGE ZABAN: Any objection to any of his
22 exhibits?

1 MR. KERBER: No.

2 JUDGE ZABAN: Okay. They'll all be admitted into
3 evidence.

4 (Whereupon, Petitioner's
5 Exhibit Nos. 1, 2 and 7 were
6 admitted into evidence as
7 of this date.)

8 (Whereupon, Group
9 Exhibit Nos. 3-6 were
10 admitted into evidence as
11 of this date.)

12 JUDGE ZABAN: Now, let's get down to -- let me
13 take two seconds. Let me get my book.

14 (Whereupon, there was
15 a short recess.)

16 JUDGE ZABAN: Now, Mr. Kerber how long will you
17 need to have your prepared testimony?

18 (Whereupon, there was a
19 discussion off the record.)

20 MR. KERBER: One other thing, I have not worked
21 with -- in the Commission with exhibits like these
22 photos. Can we come check those out or whatever the

1 same way you would --

2 JUDGE ZABAN: I'll tell you what we'll do. I am
3 going -- because -- and this is generally what we
4 do. We will admit them subject to cross.

5 MR. KERBER: That's fine. I just -- since
6 they're in I'd like to be able to have the written
7 testimony, refer specifically to them to have a
8 question, you know, Have you looked at Exhibit,
9 let's say, 3A? Yes, so, you know --

10 JUDGE ZABAN: Let me ask you a question.
11 Generally in this instance --

12 MR. BERTELLE: Excuse me.

13 JUDGE ZABAN: Yes.

14 MR. BERTELLE: They were already given an
15 opportunity to cross-examine me and they said they
16 weren't going to so how can you admit them subject
17 to cross?

18 JUDGE ZABAN: I meant subject to their own
19 witnesses and we --

20 MR. BERTELLE: I object to such a -- this is
21 procedure that is unheard of in every jurisdiction
22 according to the law.

1 JUDGE ZABAN: First of all, let me --

2 MR. BERTELLE: I am entitled to have you rule
3 upon admission of my exhibits prior to my resting.

4 JUDGE ZABAN: Mr. Bertelle, actually, the truth
5 of the matter is that if you find -- and
6 Mr. Bertelle is correct because the bottom line is
7 on these photographs, the only requirement of
8 Mr. Bertelle is that they truly and accurately
9 depict what they purport to be. If you have
10 something that's different, you can introduce that
11 at a later time.

12 MR. BERTELLE: You didn't object to their
13 admission.

14 JUDGE ZABAN: Let me finish. The bottom line
15 here is that Mr. Bertelle took a group of
16 photographs. He testified that they are -- truly
17 and accurately depict what he observed on the day he
18 took the photographs. That's sufficient to get them
19 in. I've looked at the photographs that
20 Mr. Bertelle says came from Ameritech. They portray
21 exactly the same thing, so I can't imagine any other
22 circumstances under which they would be

1 objectionable. So in that particular instance, yes,
2 I'll allow you to admit them, okay? I have no
3 problem with them being admitted. They are
4 admitted.

5 MR. KERBER: I was just asking about the
6 mechanics of access so that I could include in the
7 testimony specific questions pertaining to the
8 exhibits as --

9 JUDGE ZABAN: The next question is:
10 Mr. Bertelle, have you provided him with copies of
11 your photographs?

12 MR. BERTELLE: I said as follows: I said here is
13 a receipt. I gave him a receipt. I said, You pay
14 one-third of this receipt, you get your own copies
15 and I had copies made for him but he -- Ameritech
16 decided they do not want to pay for the cost of
17 them, so they don't get them. Period.

18 JUDGE ZABAN: Well, I don't think that's an
19 unreasonable request.

20 MR. KERBER: I don't have any problem paying for
21 a set of the photos. What actually happened is
22 Mr. Bertelle's receipt got lost --

1 JUDGE ZABAN: Okay. All right.

2 MR. KERBER: Anyway, but what I wanted to be able
3 to do was to be able to access them as marked so
4 that I can refer to them as marked in the testimony.
5 In other words, have a question -- you know, Please
6 look at Exhibit 3A.

7 JUDGE ZABAN: Here's a real simple thing. Bring
8 in your pictures after you pay Mr. Bertelle for his
9 share. You will mark them identically as they're
10 marked here and you can show your witness and he can
11 testify from your set. I mean, that's --

12 MR. KERBER: That's fine too. I just wanted to
13 know how you wanted to go about that mechanically.

14 MR. BERTELLE: Let me put it to you this way: I
15 don't care if he looks at these exhibits --

16 JUDGE ZABAN: I know.

17 MR. BERTELLE: -- to use them to -- we know
18 they're all identified in the record. If he -- if
19 they disappear, then it's spoliation of evidence and
20 I win and Ameritech get all --

21 JUDGE ZABAN: I'll hang onto them.

22 MR. KERBER: That was the only question.

1 JUDGE ZABAN: I'll be the keeper of the
2 photographs and when you get your set after paying
3 Mr. Bertelle, okay, then what will happen is you can
4 which in under my strict supervision, you can mark
5 yours accordingly.

6 And I'll tell you what, Mr. Bertelle,
7 I'm so impressed by your exhibits, I'm going to let
8 you retain Exhibit 2 which is the spaghetti wiring.
9 I think we have enough information regarding the
10 wire that I can from memory recall what it looks
11 like.

12 Now, is that Exhibit 6 that you have in
13 your hand?

14 MR. BERTELLE: No, Exhibit 6 --

15 JUDGE ZABAN: Those three?

16 MR. BERTELLE: No, these --

17 JUDGE ZABAN: Just extras?

18 MR. BERTELLE: These are extras.

19 JUDGE ZABAN: Fine. So let's get on. So we need
20 two weeks to get the transcript. How long after
21 that, then, do you need to produce testimony? We're
22 going to -- because I want Mr. Bertelle to give him

1 an opportunity to look over your testimony so he can
2 determine if he wants to do any cross-examination
3 and which witnesses he wants present, if any.

4 MR. BERTELLE: I object to this strange procedure
5 where they are allowed to present their direct
6 testimony in written form, thereby bypassing such
7 mundane objections as hearsay. Because, you see,
8 when you write something out in a narrative form,
9 you can present a fact as a historical conclusion.

10 JUDGE ZABAN: Let me explain something to you,
11 Mr. Bertelle, and as in other hearings. They're
12 going to submit what is proposed testimony. It
13 doesn't get admitted until they move to have it
14 admitted, and at such time they move to have it
15 admitted, I will entertain any objections you have
16 to those portions of the testimony that you consider
17 to be offensive, hearsay or in violation of the law.
18 And at such point if I sustain any of your
19 objections, they will be stricken from the document
20 and not made part of the record, as they would be in
21 normal testimony. It's for the purpose of
22 expedition.

1 MR. BERTELLE: Your Honor, to say that Columbus
2 discovered or landed in Santo Domingo 1492 is really
3 hearsay, you see, but you can present it in a
4 narrative form and how do you object to it when you
5 say Columbus landed in was it Santo Domingo where
6 he -- but do you understand what I'm -- that's my
7 point.

8 JUDGE ZABAN: I understand.

9 MR. BERTELLE: But in any event, I have tried a
10 few cases and I understand a few of these --

11 JUDGE ZABAN: But, actually, the truth -- quite
12 frankly and as you well know in an administrative
13 proceeding, hearsay is admissible if it's normally
14 the type and kind relied upon by people, so --

15 MR. BERTELLE: I didn't know that.

16 JUDGE ZABAN: -- I think I can discern what's
17 relevant and what's not relevant.

18 Okay. Let's -- that having been said,
19 let's get on with --

20 MR. KERBER: Schedule.

21 JUDGE ZABAN: Give me a date that you need to --

22 MR. HUTTENHOWER: Sometime either the last week

1 of May or the week after that.

2 JUDGE ZABAN: All right.

3 MR. BERTELLE: That's a whole year without
4 phones. And, mind you, as I said, that there's a
5 real and present danger that my building could be
6 burned down and I would be unable to call the fire
7 department or that somebody could come and try to
8 knock my door down and rob me. I would be unable to
9 call the police, but Ameritech as a public utility
10 should be allowed as much time as they need to
11 present in a leisurely fashion their defense.

12 JUDGE ZABAN: Mr. Bertelle, your plight is noted
13 for the record. I'm going to give you to May 24th
14 to produce the written testimony. That's a month.

15 MR. HUTTENHOWER: My problem was that I have a
16 hearing, I think, on May 25th.

17 JUDGE ZABAN: So fine. You're doing nothing more
18 than producing testimony. We're not going to have
19 the hearing on the 24th.

20 MR. KERBER: Jim, I can help out.

21 JUDGE ZABAN: Here, we'll make it the 25th. That
22 way you can go to the hearing and deliver it at the

1 same time.

2 All written testimony will be due on
3 May the 25th. Mr. Bertelle, I'm going to give you
4 approximately two weeks to examine it, you'll notify
5 Ameritech what witnesses you want present. We're
6 going to set this hearing down for June 6th.

7 MR. BERTELLE: Can't we do it on the anniversary
8 of my complaint?

9 JUDGE ZABAN: What's the anniversary of your
10 complaint?

11 MR. BERTELLE: June 9th.

12 JUDGE ZABAN: That's a Saturday.

13 MR. BERTELLE: You don't work on Saturday?

14 JUDGE ZABAN: Ameritech only comes out on
15 Sundays, so we're not going to come out on Saturday.
16 How about June 6th?

17 MR. BERTELLE: That's fine.

18 JUDGE ZABAN: Let's make this June 6th. Let's
19 make this at 10:00 o'clock in the morning and that's
20 for the conclusion of hearing.

21 MR. KERBER: One thing for the record on this
22 question of phone service. Mr. Bertelle's service

1 has been good to the NID for the entire time this
2 thing has been proceeding. If he doesn't want us to
3 do the inside wire work, most competent electricians
4 are capable of doing it. He can have anybody he
5 wants wire him up and he will have dial tone.

6 JUDGE ZABAN: I understand for the record what's
7 going on, so we're going to just continue this until
8 June 6th at 10:00 o'clock.

9 MR. BERTELLE: June 6 at 10:00?

10 JUDGE ZABAN: Right. And all written testimony
11 is due by May 25th.

12 I will be the keeper of the photos.
13 Thank you all for playing. That concludes this
14 hearing for today. It's continued to June 6 at
15 10:00.

16 (Whereupon, the above-entitled
17 matter was continued to
18 June 6, 2001 at 10:00 a.m.)
19
20
21
22

CERTIFICATE OF REPORTER

STATE OF ILLINOIS)
COUNTY OF COOK)

CASE NO. 00-0473

TITLE: Donald L. Bertelle vs. Illinois Bell

I, Giraida B. Bordabeheres, do hereby certify that I am a court reporter contracted by SULLIVAN REPORTING COMPANY, of Chicago, Illinois; that I reported in shorthand the evidence taken and the proceedings had in the hearing on the above-entitled case on the 24th day of April A.D. 2001; that the foregoing 52 pages are a true and correct transcript of my shorthand notes so taken as aforesaid, and contains all the proceedings directed by the Commission or other person authorized by it to conduct the said hearing to be stenographically reported.

Dated at Chicago, Illinois, this 9th day of May A.D. 2001.


REPORTER